

CHAPTER 239

PUBLIC SERVICE COMPANY TAX LAW

Section

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§239-1 Tax levy, in general. There shall be levied and assessed upon each public service company a tax in the manner provided by this chapter. [L 1932 2d, c 43, §1; am L 1933, c 183, §2; RL 1935, §2140; RL 1945, §5671; RL 1955, §126-1; am L Sp 1957, c 1, §9(a); am L 1963, c 147, §2(b); HRS §239-1]

Case Notes

Cited: 34 H. 324

§239-2 Definitions. As used in this chapter unless otherwise required by the context:

- (1) "Public utility" has the meaning given that term in section 269-1.
- (2) "Public service company" means a public utility, motor carrier, or contract carrier.
- (3) "Motor carrier" means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab.
- (4) "Contract carrier" means a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.
- (5) "Carrier" means a person who engages in transportation, and does not include a person such as freight forwarder who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.
- (6) "Gross income" means the gross income from public service company business as follows:
 - (A) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
 - (B) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
 - (i) Originating and terminating within this State;
 - (ii) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
 - (iii) By means of plant or equipment located in the State, between points in the State; or
 - (C) Gross income from the transportation of freight by motor carriers (other than as stated in subparagraph (B)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in subparagraph (B)).

The words "gross income" and "gross income from public service company business" shall not be construed to include dividends (as defined by chapter 235) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. "Affiliated public service company group" means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. "Member of an affiliated public service company group" means a corporation (including the parent corporation) which is included within an affiliated public service company group.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this paragraph "tourism related services" means motor carriers of passengers regulated by the public utilities commission.

- (7) The "net operating income" of a public utility subject to the tax rate imposed by section 239-5(a) is the operating revenues less the operating expenses and tax accruals, including in the computation of such revenues and expenses, debits and credits arising from equipment rents and joint facility rents. In the event that, but for this sentence, deductions could not be had for expenses of services because such services were rendered by the same person or persons constituting the public utility or could not be had for income taxes, because such taxes were levied against the person or persons constituting the public utility in the person's or their individual capacity and not as a separate entity, there nevertheless shall be allowed as deductions in computing the net operating income (A) a reasonable allowance for the value of personal services actually rendered, and (B) such proportion of the actual amount of income taxes, federal and state, as fairly represents the portion of the income so taxed which was derived from the public utility business.
- (8) "Ports", "airports", or "points in the State" shall be deemed to be such if they are loading, unloading, transshipment, assembly, transfer, or relay points.
- (9) "Home port" means the place where vessels or aircraft have their tax situs or principal tax situs.
- (10) "Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways. [L 1932 2d, c 43, §2; RL 1935, §2141; RL 1945, §5672; am L 1945, c 78, §1; RL 1955, §126-2; am L Sp 1957, c 1, §9(b); am L 1963, c 147, §2(c); HRS §239-2; am L 1977, c 26, §1; am imp L 1984, c 90, §1; am L 1986, c 308, §1]

Case Notes

"Gross income", "net operating income", defined. 34 H. 269, aff'd 105 F.2d 286.

The portion of tariff rates reflecting value of equipment owned by taxpayer's customer is not income earned by taxpayer. 57 H. 477, 559 P.2d 283.

"Gross income" from conveyance or transmission of telephone messages or furnishing of facilities for transmission of intelligence by electricity construed. 61 H. 572, 608 P.2d 383.

§239-3 Exemption from real property taxes. In order to secure under this chapter an exemption of real property from the taxes imposed by chapter 246, a public utility shall annually file with the tax assessor on or before December 31 preceding the tax year, a return of such property in such form as shall be prescribed by the director, setting forth its claim to the exemption. The claim may include real property under lease to the public utility, under which lease the public utility is required to pay the taxes upon the property, and the claim to exemption shall be determined the same as if the public utility were the owner of the property. [L 1949, c 218, §2; RL 1955, §126-3; am L Sp 1959 1st, c 28, §2; am L Sp 1959 2d, c 1, §16; HRS §239-3; am L 1969, c 170, §34; am L 1975, c 157, §33]

§239-4 Returns. Each public service company, on or before the twentieth day of the fourth month following the close of the taxable year, shall file with the office of the department of taxation for the district within which the principal office of the public service company is maintained a return in such form as the department may prescribe, showing its taxable gross income for the preceding taxable year. In case any public service company engages in lines of business other than its public service company business, the receipts therefrom shall not be subject to tax under this chapter, but the same tax liabilities shall attach to the public service company on account of the other lines of business as would exist if no public service company business were engaged in. In the case of a public utility subject to the rate of tax imposed by section 239-5(a) or(b), if the public utility engages in lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed the same as if no public utility business were done. [L 1932 2d, c43, 3; RL 1935, §2142; RL 1945, §5673; RL 1955, §126-4; am L 1957, c 34, §22; am L Sp 1959 2d, c 1, §16; am L 1963, c 147, §2(d); am L 1967, c 37, §1; HRS §239-4; am L 1991, c 25, §1]

Case Notes

Cited: 34 H. 269, 270.

§239-5 Public utilities, generally. (a) There shall be levied and assessed upon each public utility, except airlines, motor carriers, common carriers by water, and contract carriers taxed by section 239-6, a tax of such rate per cent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is in lieu of all taxes other than those below set out, and is a means of taxing the real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the personal property of the public utility, tangible and intangible, including going concern value. In addition to the tax imposed by this chapter there also are imposed income taxes, the specific taxes

imposed by chapter 249, the fees prescribed by chapter 269, any tax specifically imposed by the terms of the public utility's franchise or under chapter 240, the use or consumption tax imposed by chapter 238, and employment taxes.

The rate of the tax upon the gross income of the public utility shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen per cent or less, the rate of the tax on gross income shall be 5.885 per cent; for all companies having net income in excess of fifteen per cent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one per cent in the ratio of net income to gross, there shall be an increase of .2675 per cent in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term "R" is the ratio of net income to gross income, and "X" is the required rate of the tax on gross income for the utility in question:

$$X=(1.8725+26.75R)\%;$$

provided that in no case governed by the formula shall "X" be less than 5.885 per cent or more than 8.2 per cent.

However, if the gross income is apportioned under section 239-8(b) or (c), there shall be no adjustment of the rate of tax on the amount of gross income so apportioned to the State on account of the ratio of the net income to the gross income being in excess of fifteen per cent, and it shall be assumed in such case that the ratio is fifteen per cent or less.

(b) Notwithstanding subsection (a), the rate of the tax upon the portion of the gross income of a carrier of passengers by land which consists in passenger fares for transportation between points on a scheduled route, shall be 5.35 per cent. However, if the carrier has other public utility gross income the fares nevertheless shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income.

(c) Notwithstanding subsection (a), the rate of tax upon the portion of the gross income of a public utility which consists of the receipts from the sale of its products or services to another public utility which resells such products or services shall be one-half of one per cent, provided that the resale is subject to taxation under this section, and provided further that the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income described herein bears to its total public utility gross income. Whenever the public utility has other public utility gross income the gross income from the sale of its products or services to another public utility shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income. [L 1932 2d, c 43, §4; RL 1935, §2143; RL 1945, §5674; RL 1955, §126-5; am L Sp 1957, c 1, §§9(c) to (f); am L 1963, c 147, §2(e); am L 1965, c 201, §§30, 31; HRS §239-5; am L 1968, c 59, §2; am L 1974, c 135, §1; am L 1990, c 34, §13]

Case Notes

"Net income" defined. 34 H. 269, aff'd 105 F.2d 186; 34 H. 324.

The portion of tariff rates reflecting value of equipment owned by taxpayer's customer is not income earned by taxpayer. 57 H. 477, 559 P.2d 283.

[§239-5.5] Surcharge amounts exempt. Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income for the acting utility for purposes of this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption. [L 1993, c 337, §2]

§239-6 Airlines, certain carriers. There shall be levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business; provided that if an airline adopts a rate schedule for students in grade twelve or below travelling in school groups providing such students at reasonable hours a rate less than one-half of the regular adult fare, the tax shall be three per cent of its gross income each year from the airline business. There shall be levied and assessed upon each motor carrier, each common carrier by water, and upon each contract carrier other than a motor carrier, a tax of four per cent of its gross income each year from the motor carrier or contract carrier business. The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 237 but is not in lieu of any other tax. [L 1963, c 147, §2(f); am L 1965, c 155, §18; Supp, §126-5.1; HRS §239-6; am L 1968, c 59, §3; am L 1970, c 180, §22]

Case Notes

Federal law preempts gross receipts tax on air transportation or carriage of persons in air commerce. 464 U.S. 7.

Commissions retained by airline's travel agents are includible in airline's gross income for purposes of imposing tax. 56 H. 626, 547 P.2d 586.

Section does not burden commerce unduly, and is not preempted by federal law. 65 H. 1, 647 P.2d 263.

[§239-6.5] Tax credit for lifeline telephone service subsidy. A telephone public utility subject to this chapter that has been authorized to establish lifeline telephone service rates by the public utilities commission shall be allowed a tax credit, equal to the lifeline telephone service costs incurred by the utility, to be applied against the utility's tax imposed by this chapter. The amount of this credit shall be determined and certified annually by the public utilities commission. The tax liability for a telephone public utility claiming the credit shall be calculated in the manner

prescribed in section 239-5; provided that the amount of tax due from the utility shall be net the lifeline service credit. [L 1986, c 116, §2]

§239-7 Assessments; payments; chapter 235 applicable. (a) The tax imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times, and in the manner (in installments or otherwise) provided by this section.

(b) The total amount of the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department, at its election, may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department.

(c) The department shall prescribe the forms in which returns shall be made so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes, the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and director of finance in connection with the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the return for the taxable year, or the due date prescribed for the filing of the return, whichever is later. [L 1932 2d, c 43, §5; RL 1935, §2144; RL 1945, §5675; RL 1955, §126-6; am L 1959, c 277, §16; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1 and c 147, §2(g); HRS §239-7; am L 1991, c 25, §2; am L 1992, c 38, §2]

Case Notes

Claim for refund starts to run from due date of any quarterly payment. 68 H. 391, 716 P.2d 1138.

§239-8 Allocation and apportionment. (a) The gross income included in the measure of the tax under section 239-2(6)(B) or (C) shall be determined by an allocation and separate accounting so far as practicable.

(b) If under section 239-2(6)(B) an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the direct cost of the transportation, conveyance, or transmission designated in section 239-2(6)(B) bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.

(c) If under section 239-2(6)(C) an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the total direct cost of the transportation, conveyance, or transmission within the State bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment. [L 1963, c 147, §2(i); Supp, §126-7.1; HRS §239-8]

§239-9 Time of application of tax and other provisions. (a) In general. The tax imposed by this chapter applies to every public service company:

- (1) Which is in business at the commencement of a calendar year, as of January 1 of that year;
- (2) Which begins business after the commencement of a calendar year, as of the commencement of business.

(b) Third year of doing business; earlier years, how governed. If the company is in business at the commencement of the calendar year, and was in business during the whole of the preceding year and prior thereto, the tax shall be returned and paid as provided in sections 239-4 and 239-7.

However, if subsection (a)(2) applies, or if the company though in business at the commencement of the calendar year was not in business during the preceding year, or was in business during the preceding year or a part thereof but not prior thereto, the tax shall be returned and paid as provided in subsections (c) and (d).

(c) First year of doing business. The measure of the tax for the year in which the company begins business is an estimate of the gross income of the public service company for that year or for the part of that year in which it is in business.

The tax thereon for the year in which the company begins business shall be at the following rate:

- (1) If subsection (a)(2) applies, at the rate of four per cent, or
- (2) If subsection (a)(1) applies but the company though in business at the commencement of the calendar year was not in business during any part of the preceding year, the tax shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

The estimate shall be made and the tax returned on or before the twentieth day of the third month after the month in which the company begins business and shall be subject to adjustment by the filing of an amended return as provided in subsection (e). Payment of the tax shall accompany the return unless time for payment is extended by the director of taxation. The extension may be granted by the director in order to provide for payment of the tax in installments during the remainder of the taxable year.

(d) Second year of doing business. The measure of the tax for the year following the year in which the company began business is an estimate of the average gross income for a taxable year, subject to adjustment by the filing of an amended return as provided in subsection (e). The estimate shall be made and the tax returned and paid at the times provided for other companies which are in business at the commencement of the calendar year. The tax thereon shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

(e) Adjustment of estimates. An amended return shall be filed after the close of the applicable taxable year for each year for which an estimated tax return was filed under subsection(c) or (d).

If the year for which the estimate is made is the year in which the company commenced doing business and subsection (c) applies, any variance between the estimate and the actual gross income for that year shall be adjusted and a credit or refund made, or payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the actual gross income of the company for that year.

If the year for which the estimate is made is the year following the year in which the company commenced doing business and subsection (d) applies, the average monthly gross income during the period from and after the commencement of business to the close of the year for which the estimate was made shall be determined and multiplied by twelve. Any variance between the estimate and the amount so computed shall be adjusted and a credit or refund made, or payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the amount computed.

The amended return shall be made and filed and any additional tax due paid on or before the twentieth day of the fourth month following the close of the taxable year in which the company commenced business.

The adjustment of the tax imposed under this chapter and the making of an amended return as provided under this section shall apply only to the first and second taxable years of doing business.

(f) Acquisition of business of another company. Whenever any public service company subject for any year to the tax imposed by this chapter, shall have acquired by purchase or otherwise during the preceding year the business or any part thereof of another public service company liable to tax under this chapter for the preceding year but not liable for the year following the sale or disposition, and the acquiring company continues the operation of the business so acquired, the gross income to be reported by the acquiring company for the purpose of determining the amount of its tax under this chapter for the year following the year in which the business was so acquired shall include, in addition to the gross income of the acquiring company during the year ending December 31 or fiscal year preceding, whichever is applicable, the gross income of the business or part thereof so acquired for the portion of the preceding year as the business was not operated by the acquiring company.

This subsection shall not apply to any company whose tax for the year involved is measured under subsection (c) by an estimate of gross income for the year subject to adjustment after the close of the year.

If the first paragraph of this subsection applies but the tax of the acquiring company for the year is governed by subsection (d) and adjusted under subsection (e), then in determining the average monthly gross income for that purpose there shall be included, in addition to the gross income of the acquiring company for the period involved in the determination of the average, the gross income of the business or part thereof acquired by the company for the portion of that period in which the business was not operated by the acquiring company.

(g) Consolidation or merger. Whenever there is a consolidation or merger of public service companies, liability to the tax imposed by this chapter shall attach to the company thus formed and the gross income which shall be used for measuring the tax of the company thus formed shall include the gross income of the companies which were

consolidated or merged. [L 1963, c 147, §2(j); am L 1965, c 155, §19; Supp, §126-7.5; HRS §239-9; am L 1991, c 25, §3]

§239-10 Disposition of revenues. All taxes collected under this chapter shall be state realizations. [L 1932 2d, c 43, §6; RL 1935, §2145; RL 1945, §5676; RL 1955, §126-8; HRS §239-10]

§239-11 Exemption of certain contract carriers. (a) There shall be exempted and excluded from the measure of the tax imposed by this chapter the gross income from any contract carrier by water which is engaged primarily in the business of transporting persons between harbors or wharves of the various counties for interisland cruises within the State; provided that such exemption shall be applicable for the period July 1, 1981, to June 30, 1996.

(b) Any contract carrier and related partners, if any, claiming an exemption under subsection (a) shall submit an annual financial report, prepared by an independent certified public accountant, to the department of taxation and to the department of business, economic development, and tourism on or before the fifteenth day of the fifth month following the close of each taxable year for which the exemption is being claimed; provided that in addition to reports in 1992, 1993, 1994, and 1995, an annual financial report shall be due on or before March 1, 1996. The annual financial report, prepared in a form approved by the director of taxation, shall include but not be limited to:

- (1) A balance sheet of assets and liabilities;
- (2) A statement of income and expenses;
- (3) Supplementary information to financial statements;
- (4) A summary of financial condition; and
- (5) An apportionment of income and expenses of the contract carrier and related partners, if any, within and without the State.

Within thirty days of the receipt of the financial report from the contract carrier and related partners, if any, the director of taxation shall submit relevant financial data to the legislature. Failure to comply with this subsection by the contract carrier or related partners, if any, as determined by the director of taxation, shall constitute a waiver of the right to claim the exemption. [L 1981, c 240, §1; am L 1985, c 30, §1; am L 1987, c 20, §1; am L 1991, c 228, §1]